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[redacted]

accordingly, the public interest would be served by consideration of this Reply.[1/]

2. Aries demonstrated in its reply comments that WVCY's rulemaking proposal should be dismissed because WVCY failed to serve a copy of its opening comments on Aries. In its Response, WVCY disputes this contention. WVCY's arguments, however, are strained and meritless.

3. WVCY first claims that Aries' opposition to WVCY's petition for reconsideration of the staff's prior action dismissing its reallotment proposal "was outside the contemplation of the Commission's rules governing FM allotment proceedings, and does not automatically give Aries party status in the proceeding subsequently commenced by the Commission." Response at 3. WVCY cites as authority the Commission's First Report and Order in BC Docket No. 80-130, 88 F.C.C.2d 631, 633 (1981), where the Commission eliminated its prior procedure of allowing pre-NPRM comments on allotment petitions for rulemaking.

4. In the first place, this claim is woefully late. WVCY made no claim that Aries' opposition to WVCY's petition for reconsideration was somehow procedurally impermissible at the time the opposition was filed, and WVCY cannot be heard to make such a claim now. Moreover, the authority cited by WVCY does not support its argument. Aries' pre-NPRM participation in this proceeding did not take the form of "comments" on WVCY's petition

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1/ Concurrently herewith, Aries is filing a motion for leave to file this Reply.

for rulemaking; rather, Aries filed an opposition to WVCY's appeal of an affirmative staff action -- i.e., the dismissal of WVCY's rulemaking petition. Aries' pleading was specifically authorized by the Commission's rules. See Section 1.429 (authorizing petitions for reconsideration of a "final action" in a rulemaking proceeding, as defined by Sections 1.407 and 1.425, and oppositions to such petitions); see also Section 1.407 (denial of a rulemaking petition named as an action which, under Section 1.429(a), is appealable by a petition for reconsideration). Having filed a pleading which was expressly contemplated by the Commission's rules, Aries obtained the status of a party in this proceeding.

5. WVCY's contention that the NPRM in this proceeding "did not confer party status upon Aries" is therefore irrelevant. Implicit in this argument is the notion that the issuance of the NPRM somehow wiped clean the slate of parties to the proceeding. WVCY does not, and cannot, cite any authority for this dubious proposition. Indeed, WVCY's contention is proven bankrupt by (i) the fact that the "RM" number of WVCY's rulemaking petition -- with respect to which Aries was indisputably a party -- is referenced in the caption of the NPRM; (ii) the NPRM's statement that Aries' pre-filing opposition would be considered "in conjunction with the final resolution of this proceeding"; and (iii) the NPRM's express directive that a copy of the NPRM be served on Aries. All of these facts render absurd WVCY's claim

that Aries had not attained party status prior to its initial rulemaking comments.

6. Thus, the analysis is simple, notwithstanding WVCY's attempts to obfuscate it. At the time the NPRM in this proceeding was issued, Aries was a party to the proceeding. By the terms of the NPRM, this proceeding is "restricted," and ex parte communications are forbidden. WVCY's initial comments obviously were directed to the merits of the proceeding, and WVCY failed to serve these comments on Aries -- a party to the proceeding. WVCY's rather arrogant claim of "no harm, no foul," and its irrelevant assertion that it would have supplied Aries with a copy of its opening comments had Aries asked (see Response at 4-5), do not excuse WVCY's ex parte violation. WVCY knew of Aries' pre-NPRM participation, it did not choose to serve Aries with its opening comments, and thus its conduct requires the dismissal of its allotment proposal.

7. WVCY also disputes Aries' demonstration that WVCY's proposal to reallot Channel 14 to New London, Wisconsin is not truly one to provide a first local service, but is actually one to bring a fourth service to the Appleton-Oshkosh-Neenah MSA, in which New London is located. WVCY first complains that Aries should have raised this argument in its opening comments, and alleges that Aries' opening comments did not dispute that WVCY's reallotment proposal was for a first local service to New London.

8. Both of these arguments are misplaced. Aries knows of no rule requiring all pertinent contentions regarding a proposed

allotment to be made in opening comments, and WVCY cites to none. Aries' opening comments were devoted to addressing the far more fundamental flaws in WVCY's proposal: (i) WVCY proposes, with woefully insufficient justification, to deprive Suring of its only local transmission service; and (ii) WVCY's proposal is patently violative of the advanced television "freeze" in metropolitan areas. These factors doom WVCY's reallotment proposal regardless of whether or not it would actually provide a first local service, and the fact that Aries' opening comments took WVCY's "first local service" claim at face value for purposes of discussion did not in any way constitute a concession on that point.

9. WVCY makes much ado over whether New London should be considered to be within the Appleton-Oshkosh-Neenah MSA,[2/] and assuming it should, whether Commission precedent supports WVCY's claim to a preference for providing a first local service. WVCY does a great deal of nitpicking about the facts and the law, but all of its claims become groundless when one considers the facility that WVCY is actually proposing.

2/ WVCY asserts that New London should not be considered part of the MSA because part of the community is situated in Waupaca County, outside the MSA. It is undisputed, however, that part of New London does fall within the Appleton-Oshkosh-Neenah MSA, and WVCY provides no authority for excluding New London under these circumstances. In any event, as shown above, WSCO(TV)'s New London operation would serve virtually all of the Appleton-Oshkosh-Neenah and Green Bay MSAs regardless of whether New London is technically considered to be within an MSA.

10. WVCY concedes that under Bessemer/Tuscaloosa and predecessor cases, the Commission may consider, and has

areas, stretching nearly all the way to the coast of Lake Michigan.

12. WVCY fails to fully appreciate the fundamental distinction between determinations of "community" for allotment purposes in radio and in television proceedings.[4/] In television allotment proceedings, the Commission has defined "community" far more broadly due to the nature of the service. This principle, which was recognized in Bessemer/Tuscaloosa, was cited by the D.C. Circuit in Winter Park Communications, Inc. v. FCC, 873 F.2d 347 (D.C. Cir. 1989), aff'd sub nom. Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997 (1990):

> Television stations typically serve much larger areas than radio stations, involve considerably greater capital investments, and require larger audiences to attract more advertising revenues. Beyond these differences, the number of television channels available is much more limited and, consequently, the television service area for Section 307(b) purposes "should be defined in terms of coverage and not in terms of artificial political boundaries."

4/ Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), which was cited by the staff's decision in Bessemer/Tuscaloosa, rejected the notion that the relevant "community" in AM radio cases automatically encompasses the entire MSA. In Bessemer/Tuscaloosa, the staff stated that "[c]onsistent with St. Louis Telecast and Winter Park Communications, we believe it justified to employ a definition of 'community' analogous to that found in Tuck in comparative television allotment proceedings." As shown below, both St. Louis Telecast and Winter Park are television cases that support consideration of WVCY's proposal as one to bring a fourth service to the Appleton-Oshkosh-Neenah MSA. Moreover, the staff found in Bessemer/Tuscaloosa that Bessemer was within not only the Birmingham Urbanized Area, but within the Birmingham MSA.

Id. at 352 (quoting Cleveland Television Corp., 91 F.C.C.2d 1129, 1137 (Rev. Bd. 1982) (citations omitted).

13. Thus, in television allotment proceedings, the Commission has recognized that communities within a metropolitan area may have separate and distinct attributes that make them deserving of a channel. However, in reallotment and 307(b) cases where the proposed community is in close proximity to a metropolitan area, the Commission does not consider whether the community is "a discrete community without any local television transmission outlet." For example, in Bessemer/Tuscaloosa, the Commission acknowledged the proponent's showing that Bessemer was an independent community with separate attributes. 5 FCC Rcd at 669, para. 6. The Commission held that Bessemer was a "licensable" community, yet rejected the proponent's claim -- a claim virtually identical to that being made by WVCY -- that "the key issue in this proceeding is whether Bessemer has a need for a first local television service." Id. at 669, 672 n.12; see also St. Louis Telecast, 22 F.C.C. at 713-14 (Commission denied television 307(b) preference to East St. Louis, Illinois despite finding that "East St. Louis is a city politically distinct from St. Louis," that "each municipality exists as a separate political entity," and that "each municipality in the area

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14. Instead, where as here a television channel is proposed for a community in close proximity to a larger metropolitan area, the Commission considers the coverage being proposed for the facility, and specifically whether the proposed station in question will provide a Grade B signal over the metropolitan area. See Winter Park, 873 F.2d at 351; St. Louis Telecast, 22 F.C.C. at 714 ("we are presented not with an instance of separate communities competing for a single available service but of competing applicants, each seeking to bring a new service to substantially the same area"). Here, it is clear that WSCO(TV)'s New London operation would provide Grade B service to virtually all of the Appleton-Oshkosh-Neenah and Green Bay metropolitan areas.

15. Thus, WVCY's interpretation of relevant precedent is flawed, and its repeated assertions as to New London's "distinctness" are an irrelevant exercise. In denying the reallotment proposed in Bessemer/Tuscaloosa, the Commission emphasized its desire "that the procedural flexibility afforded by Commission rule 1.420(i) not result in a wholesale distribution of stations from rural to urban areas." 5 FCC Rcd

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5/(...continued)
Birmingham." Response at 8. A reading of Bessemer/Tuscaloosa, however, reveals that the alleged "community of interests" between the two communities played no part in the decision. The only such factor cited by the Commission was that Bessemer was less than 15 miles from Birmingham. 5 FCC Rcd at 670, para. 12. According to WVCY, New London is "more than 20 miles from Appleton" -- hardly a far cry from the 15-mile difference involved in Bessemer/Tuscaloosa.

at 670, para. 11. WVCY's proposal flies in the face of this policy. Purely and simply, WVCY is proposing to move its television station from the rural community of Suring into the midst of a major population center, and operate a facility that will provide service to several urbanized areas. Consistent with the Commission's well-established policy in television allotment cases, WVCY's New London proposal cannot even remotely be considered one to provide a first local service.[6/]

For the reasons set forth above, as well as the reasons set forth in Aries' comments and reply comments, WVCY's rulemaking proposal must be denied.

Respectfully submitted,

ARIES TELECOMMUNICATIONS CORPORATION

By: _____
David D. Oxenford
Gregory L. Masters

Its Attorneys

FISHER, WAYLAND, COOPER AND LEADER
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

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6/ Aries reiterates, as explained in its comments and reply comments, that WVCY's proposed reallotment would flagrantly disserve the public interest even if were considered a first local service proposal.

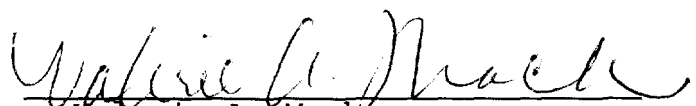
CERTIFICATE OF SERVICE

I, Valerie A. Mack, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "REPLY TO RESPONSE OF WISCONSIN VOICE OF CHRISTIAN YOUTH" were sent this 13th day of April, 1993, by first class United States mail, postage prepaid, to the following:

* Michael C. Ruger, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8322
Washington, D.C. 20554

James R. Bayes, Esq.
Wayne D. Johnsen, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

* By Hand



Valerie A. Mack